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AGENDA ITEM 3

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

I. SUBJECT: Technical Amendments to Government Code

II. PROGRAM: Legislation

III. RECOMMENDATION: Staff recommends that the Board **sponsor** legislation to make clarifying and technical amendments to Government Code provisions administered by CalPERS.

IV. ANALYSIS:

This proposal would make several minor and technical amendments to various sections of the Government Code administered by CalPERS. Staff has identified provisions requiring legislative change. This proposal will ensure that the statutes administered by CalPERS are as clear and unambiguous as possible.

Specifically, this proposal would address the following issues:

- **Amend Minimum Age for Participation in the Partial Service Retirement Program to Comply with Federal Requirements**

The Partial Service Retirement Program (PSRP) is a phased retirement program. The PSRP is available upon approval of the employer to state miscellaneous members (other than university members), state industrial members, and local public agencies that contract for the program. The PSRP allows a member to reduce his or her work time and receive a partial retirement allowance without a separation in employment. As of August 2005, there were 120 participants in the program.

The Internal Revenue Service has ruled that a pension plan may not permit the distribution of employer-provided benefits to a participant prior to the plan's normal retirement age unless the participant has a "bona fide" separation in service. The PSRP participants are considered active employees and there is

no “bona fide” separation in service when they receive the partial retirement allowance. Consequently, the retirement allowance could be considered an impermissible in-service distribution unless the participant has reached normal retirement age.

The normal retirement age for CalPERS members was recently established in regulation (California Code of Regulations (CCR), Title 2, Sections 586 through 586.2). Currently, the minimum age for participation in the PSRP is lower than the CalPERS normal retirement age.¹ In order to comply with federal requirements, the minimum age for PSRP participation should be at least the normal retirement age specified in the CCR regulations.

This proposal will prospectively make the minimum age for participation in the PSRP consistent with the normal retirement age specified in CCR regulations and will ensure that PSRP provisions meet federal requirements.

- **Payrate – Publicly Available Pay Schedules**

The calculation of a member’s retirement allowance is based on the member’s final compensation, age at retirement, and credited length of service. SB 53 (Chapter 1297, Statutes of 1993) amended compensation provisions to provide that final compensation consists of the average annual compensation earnable during the final compensation period, which is defined to include “payrate” and “special compensation.”

Government Code Section 20636 specifies that the payrates of members not in a group or class are required to coincide with publicly available pay schedules, and that the payrate of a member in a group or class must be the same as the amount paid to similarly situated members of the same group or class of employment. Because the section is not clearly worded, some employers have interpreted Section 20636 to mean that the payrates of members in a group or class are not required to correspond with publicly available pay schedules.

This proposal amends Section 20636 to clearly state that the payrates of members in a group or class must be consistent with publicly available pay schedules. This proposal will clarify the intent of Section 20636 and is consistent with current CalPERS administration of the section.

¹ A state miscellaneous or industrial member may participate in the PSRP provided he or she is credited with (a) 20 years of state service and is either in (1) the First Tier with an attained age of 50 years or (2) the Second Tier with an attained age of 55 years or (b) the necessary years of service with the necessary attained age for retirement under the First or Second Tier and the sum of his or her age, when added to his or her service, equals or exceeds 65 years.

- **“Local Sheriff” Classification**

In 2000, the “local safety member” definition was expanded to include “local sheriffs” which, subject to contract amendment, would apply only to specified employees in San Francisco County. In 2001, legislation passed that expanded the local sheriff contract option to all CalPERS counties. As a result, the current definition of “local safety members,” include all local police officers, local sheriffs, firefighters, safety officers, county peace officers, and school safety members employed by a CalPERS contracting public agency who have by contract been included within this system.

This proposal would make the following changes relating to the “local sheriff” classification to bring consistency in the law as it applies to “local safety members:”

- Government Code Section 20479 generally prohibits any contract or contract amendment from providing any retirement benefits for some, but not all, members of the following classifications: local miscellaneous, local police officers, local firefighters, county peace officers, or local safety officers. This proposal would add the “local sheriff” classification to the list of classifications prohibited from providing any retirement benefits only to select members.
- Government Code Section 20890.1 was added in 2001 to permit past service to be converted to “local sheriff” service for positions reclassified as “local sheriff” positions. AB 256 (Chapter 708, Statutes of 2005), which permitted specified Solano County employees to be reclassified as “local sheriffs,” neglected to amend Section 20890.1 to clarify treatment of past service for the reclassified positions. This proposal corrects this oversight and makes the treatment of past service for the reclassified Solano County employees consistent with that of reclassified employees in other counties utilizing the “local sheriff” classification.
- Government Code Section 20475 allows a contracting agency to amend its contract with CalPERS, without employee election, to provide a different level of benefits to a member receiving service credit for the first time within a classification or to a member returning to service within the classification following termination of membership. This proposal would add the “local sheriff” classification to the list of classifications allowed to receive different benefits for members described above receiving credit for service performed after the effective date of a contract amendment.

- **State Alternate Retirement Program (SB 1105) Clean-Up**

SB 1105 (Chapter 214, Statutes of 2004) created the State Alternate Retirement Program (SARP) for state employees first hired on or after August 11, 2004. Under SARP, new state miscellaneous and industrial members do not contribute to CalPERS for the first two years of employment. However, provisions allow service earned while participating in SARP to be used for purposes of vesting for benefits. Although statute was amended to allow such vesting for service retirement, the section providing for disability retirement was inadvertently not amended when SARP was enacted.

This proposal will correct this oversight and is consistent with the current administration of SARP.

- **Retired Annuitants – Collection of Unemployment Insurance**

A CalPERS retiree may work for a CalPERS employer for up to 960 hours per fiscal year without reinstating to active membership. While working, the retiree continues to receive his or her full CalPERS pension and cost-of-living adjustments in addition to the earned salary.

In 2003, the Senate held a hearing on the subject of retired annuitants. During that hearing, it came to light that some retired annuitants repeatedly worked for a public employer for about 6 months each year, collected unemployment insurance for the rest of the year, and then returned to work in the previous employment at the start of the next year. The collection of unemployment insurance in such circumstances was seen as inappropriate and as a violation of the public trust.

SB 1439 (Chapter 398, Statutes of 2004) amended Government Code Section 21224 to prohibit a retired annuitant from working for a state agency if during the prior 12-month period he or she received unemployment insurance payments arising out of prior employment with the same employer.

Similar to Section 21224, Government Code Sections 21225, 21226, 21227, and 21229 also deal with the temporary employment of CalPERS members after retirement. This proposal will add the SB 1439 language to these sections to ensure that the prohibition against employment of a retired annuitant who has collected unemployment insurance during the prior 12 months is applied consistently by all affected public employers.

- **Post-Retirement Employment by CSU Academic Staff**

Government Code Section 21227 allows a California State University (CSU) academic staff member to work after retirement for a total of 960 hours per fiscal year or 50 percent of the hours he or she was employed during the last fiscal year of service before retiring. The section does not expressly provide whether the greater or lesser of the two options apply.

While CalPERS staff has interpreted that the lesser of the two options applies, the absence of the specification “whichever is less” or “whichever is more” in Section 21227 has led to different interpretations of the section by CSU retired academic members, CalPERS staff, the CSU campus employers, and the CSU Chancellor’s Office, which issues the policy to be followed by the CSU campuses. The “whichever is more” interpretation would permit some part-time instructors to work more hours after retirement than they did before they retired.

This proposal amends Section 21227 to codify the “whichever is less” interpretation to this section. This proposal would eliminate the current ambiguity associated with Section 21227 and codify CalPERS’ existing interpretation.

- **Credit for Prior Service – “Contract Date” Includes “Contract Amendment Date”**

Government Code Section 20938 (Prior Service Limited to Persons Employed on Contract Date) limits the eligibility to receive credit for prior service to persons employed by the contracting agency on the effective date of the contract granting the prior service credit. Currently, Section 20938 does not clearly indicate that the term “contract date” also means “contract amendment date” when an agency contract is amended to add a member category subsequent to the initial contract.

This proposal will clarify that contract date also means contract amendment date, consistent with preexisting law.

- **Other Technical Changes**

Makes other technical wording and grammatical corrections, and corrects or deletes inaccurate or obsolete code section references.

V. STRATEGIC PLAN:

This proposal supports Strategic Goal III to develop, design, and administer benefit programs and business processes that are innovative, effective, efficient, and valued by our members, employers, and stakeholders.

VI. RESULTS/COSTS:

This proposal will clarify application and administration of the statutes affecting the programs and benefits administered by CalPERS. No costs will be incurred as a result of this proposal.

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